

1 MICHELLE B. HEVERLY, Bar No. 178660
 2 E-Mail: mheverly@littler.com
 2 TODD K. BOYER, Bar No. 203132
 3 E-Mail: tboyer@littler.com
 3 LITTLES MENDELSON
 4 A Professional Corporation
 4 50 West San Fernando Street, 14th Floor
 5 San Jose, CA 95113-2303
 5 Telephone: 408.998.4150
 6 Facsimile: 408.288.5686

6
 7 Attorneys for Defendant
 7 LOCKHEED MARTIN CORPORATION

8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

EMILIO COLLADO,
 Plaintiff,
 v.
 LOCKHEED MARTIN, and DOES 1
 THROUGH 20, inclusive,
 Defendants.

Case No. C07 05190 JF

**STIPULATION TO ALLOW PLAINTIFF
 TO FILE FIRST AMENDED COMPLAINT
 AND [PROPOSED] ORDER**

The Parties to the above-captioned matter, by and through their attorneys, Stanley Hilton, Esq., attorney for Plaintiff, EMILIO COLLADO, and Todd K. Boyer, attorney for Defendant, LOCKHEED MARTIN CORPORATION, stipulate and agree as follows:

RECITALS

Whereas, Defendant LOCKHEED MARTIN has filed a Motion to Dismiss and Motion to Strike that is scheduled to be heard on November 30, 2007. In its motion, Defendant moved to dismiss Plaintiff's fifth cause of action for breach of the covenant of good faith and fair dealing, under Federal Rule of Civil Procedure 12(b)(6). Additionally, Defendant moved under Federal Rule of Civil Procedure 12(f), to strike portions of Plaintiff Emilio Collado's Complaint alleging race and national origin discrimination, and moved for an order striking all allegations of emotional distress from Plaintiff's third and fifth causes of action, for breach of contract and breach

1 of an implied covenant, respectively.

2 Whereas, Plaintiff and Defendant have agreed that the relief sought by Defendant's
 3 Motion to Dismiss and Motion to Strike is appropriate and thus no hearing is necessary.
 4 Accordingly, the parties agree that the matter should be taken off calendar, and also jointly request
 5 that the Court permit Plaintiff to file a First Amended Complaint. Plaintiff agrees that the First
 6 Amended Complaint shall cure all the defects raised in Defendant's motion, and that none of the
 7 allegations or causes of action which Defendant moved to dismiss or strike as enumerated in its
 8 moving papers will be contained in the First Amended Complaint.

9 **The Parties hereby further stipulate and agree as follows:**

10 1. The parties stipulate to take Defendant's Motion to Dismiss and Strike
 11 currently set for hearing on November 30, 2007 at 10:30 a.m. off calendar pending the filing of
 12 Plaintiff's First Amended Complaint.

13 2. The parties stipulate to allow Plaintiff to file a First Amended Complaint.
 14 Plaintiff agrees to draft and file the First Amended Complaint within twenty (20) days of the date
 15 this Stipulation and Order is executed by all parties and signed by the Court.

16 3. The parties stipulate and agree that Plaintiff's First Amended Complaint shall
 17 not contain any of the allegations or causes of action which Defendant moved to strike or dismiss in
 18 its Motion to Dismiss and Strike. Specifically, the First Amended Complaint shall not contain or
 19 make any reference to allegations of national origin or race discrimination, nor shall it contain a
 20 cause of action for breach of the implied covenant of good faith and fair dealing. Additionally, the
 21 parties stipulate that the First Amended Complaint shall not contain any claim for emotional distress
 22 suffered as a result of any breach of contract.

23 4. The parties further agree that this stipulation allowing Plaintiff to file a First
 24 Amended Complaint is conditioned on Plaintiff's agreement to remove the allegations and cause of
 25 action which Defendant moved to dismiss and strike by way of its Motion to Dismiss and/or Strike.
 26 The parties also stipulate that neither the First Amended Complaint nor any amended complaint
 27 thereafter shall contain the allegations and cause of action which Defendant moved to dismiss and
 28 strike in its Motion to Dismiss and/or Strike.

1 5. The parties stipulate that should the First Amended Complaint or any other
2 amended complaint contain any of the allegations or causes of action which Defendant moved to
3 dismiss and/or strike as enumerated above, that the Court should dismiss or strike those allegations
4 or causes of action from the First Amended Complaint without need for further notice or briefing.

5 6. The parties stipulate Defendant shall have twenty (20) days to file a
6 responsive pleading from the date Plaintiff electronically files his First Amended Complaint.

7
8 Dated: November 27, 2007

/s/
STANLEY HILTON, Esq.
Attorney for Plaintiff
EMILIO COLLADO

9
10 Dated: November 27, 2007

/s/
TODD K. BOYER
LITTLER MENDELSON, P.C.
A Professional Corporation
Attorney for Defendant
LOCKHEED MARTIN CORPORATION

1

2

ORDER

3 GOOD CAUSE APPEARING AND UPON STIPULATION OF THE PARTIES, IT
4 IS ORDERED that Defendant's Motion to Dismiss and Strike will be taken off calendar and Plaintiff
5 will be allowed to file a First Amended Complaint which shall not contain the allegations and/or
6 causes of action which Defendant moved to strike and/or dismiss in its Motion. The Court orders
7 that any amended complaint which contains makes reference to allegations of national origin or
8 racial discrimination, or contains a cause of action for breach of the implied covenant of good faith
9 and fair dealing shall have those allegations stricken from the Complaint without any additional
10 notice to or briefing by the parties. Plaintiff will have twenty (20) days from the date of my
11 signature on this Order to serve and file his First Amended Complaint. Defendant shall have twenty
12 (20) days after the electronic filing of the First Amended Complaint to file a responsive pleading.

13
14 Dated: 12/10, 2007


15 HONORABLE JEREMY FOGEL
United States District Judge

16

17

18

19

20

21

22

23

24

25

26

27

28